

**Robert Novak
1550 Sunrise Hwy
Copiague, New York 11726
631.842.0400 Fax 631.789.9340**

RECEIVED
IN CHAMBERS OF
HON. WILLIAM D. WALL
★ DEC 10 2009 ★
TIME A.M.
P.M.

December 10, 2009

**Honorable Magistrate Judge William D. Wall, U.S.M.J.
United States District Court
Long Island Federal Courthouse
843 federal Plaza
Central Islip, New York 11722-4449**

Re: Novak v. Active Window Pub, Et Al No. Cv 01- 3566 (DRH-WDW)

Dear Judge Wall,

In anticipation of tomorrows conference call at 11:00 regarding the deposition of Mark Rosenstein, I would like to propose an alternative to an In person deposition.

I thought I would offer a video conference, since both Mark Rosenstein and I are Internet savvy individuals.

This can be accomplished in my office here on LI with Ms. Kouril and Marks office in Boston; this would save the defendant the costs of his attorney traveling to Boston along with myself.

There is a service by Cisco called WebEx which would only require the defendants to have a webcam and login, no downloads very simple to use.

A complete recording will be available to all parties; I will pay the expense of WebEx.

This is based upon *Zito v. Leascomm Corp.*, 233 F.R.D. 395, 398 (S.D.N.Y. 2006).

The *Zito* court directed the defendant to conduct depositions by telephone or videoconference, but reserved the right to order an In-person

deposition if the defendants could demonstrate that they are unable to conduct a meaningful deposition by telephone or videoconference.

In the alternative I'll travel to Boston.

I am available until December 27 there after I'm away until January 25th.

Due to the time constraints I am faxing this to Ms. Kouril.

Respectfully Submitted.



Robert Novak

Fax: Robert Folks & Assoc.
845.8779